



National Aeronautics and
Space Administration
Washington, DC 20546

Procurement Notice

PN 97-65
September 20, 2001

SAFETY AND HEALTH (SHORT FORM)

BACKGROUND: This PN converts the interim rule published in PN 97-61 to a final rule with changes. PN 97-61 implemented a Safety and Health (Short Form) clause (1852.223-72) to address safety and occupational health in all of NASA's contracts above the micropurchase threshold where the existing NASA Safety and Health clause (1852.223-70) does not apply. This new clause holds contractors accountable for the safety and occupational health measures consistent with standard industry practice in performing the contract. It also defines NASA's safety priority to protect: (1) the public, (2) astronauts and pilots, (3) the NASA workforce, and (4) high-value equipment and property. Additionally, the NASA Safety and Health clause (1852.223-70), the Safety and Health Plan clause (1852.223-73), and the Major Breach of Safety or Security clause (1852.223-75), were amended to be consistent with the new NASA Safety and Health (Short Form) clause by adding the safety priority. An Alternate I to 1852.223-73 was added to address submission of safety and health plans under Invitation for Bids (IFB).

The changes to the interim rule contained in this PN add a prescription for use of Alt I to 1852.223-73, and clarify the submission requirements for safety and health plans under IFBs.

ACTION REQUIRED BY CONTRACTING OFFICERS: All solicitations issued after September 20, 2001, which require the submission of a Safety and Health Plan, must include the revised clause 1852.223-73 or the clause with its Alt I under IFBs. Solicitations issued before September 20, 2001 may be amended to include the revised clause if including it would not unduly delay the acquisition.

CLAUSE CHANGES: This PN adds a prescription at 1823.7001(c) for use of Alternate I to 1852.223-73, amends the text of this Alternate I to clarify the submission requirement for a Safety and Health Plan under Invitation for Bids (IFB), and deletes reference to Appendix H in both the clause at 1852.223-73 and its Alternate I.

PARTS AFFECTED: Changes are made in Parts 1823 and 1852.

REPLACEMENT PAGES: You may use the enclosed pages to replace 23:3, 52:29, 52:30, 52:30.1, 52:30.2, 52:30.3, 52:30.4, 52-93, and 52-94 of the NFS.

TYPE OF RULE AND PUBLICATION DATE: This PN was published as a final rule in the Federal Register ([66 FR 48361](#), September 20, 2001).

HEADQUARTERS CONTACT: Yolande Harden, Code HK, (202) 358-1279, email: yharden@mail.hq.nasa.gov.

R. Scott Thompson
Director, Contract Management Division

Enclosures

1823.7001 NASA solicitation provisions and contract clauses.

(a) Except as provided in paragraph (b) of this section, the clause at 1852.223-70, Safety and Health, shall be included in all solicitations and contracts for --

- (1) Negotiated acquisitions of \$1,000,000 or more;
- (2) Construction, repair, or alteration in excess of the simplified acquisition threshold;
- (3) Acquisitions having, within their total requirement, construction, repair, or alteration tasks in excess of the simplified acquisition threshold; and
- (4) Acquisitions regardless of dollar amount when --
 - (i) Any deliverable contract end item is of a hazardous nature; or
 - (ii) It can reasonably be expected that hazards will be generated and controlled within the operational environment during the life of the contract and the contracting officer determines that they warrant inclusion of the clause.

(b) The clause prescribed in paragraph (a) of this section may be excluded --

(1) From any contract subject to the Walsh-Healey Public Contracts Act (see FAR Subpart 22.6) or the Service Contract Act of 1965 (see FAR Subpart 22.10) in which the application of either act and its implementing regulations constitute adequate safety and occupational health protection; and

(2) When the contracting officer, with the approval of the installation official(s) responsible for matters of safety and occupational health, makes a written determination that the clause is not necessary under the circumstances of the acquisition.

(c) The contracting officer shall insert the provision at 1852.223-73, Safety and Health Plan, in solicitations containing the clause at 1852.223-70. This clause may be modified to identify specific information that is to be included in the plan. After receiving the concurrence of the center safety and occupational health official(s), the contracting officer shall include the plan in any resulting contract. Insert the provision with its Alternate I, in Invitations for Bid containing the clause at 1852.223-70.

(d) The contracting officer shall insert the clause at 1852.223-75, Major Breach of Safety or Security, in all solicitations and contracts with estimated values of \$500,000 or more, unless waived at a level above the contracting officer with the concurrence of the project manager and the installation official(s) responsible for matters of security, export control, safety, and occupational health. For other contracts, use of the clause is optional.

(e) For all solicitations and contracts exceeding the micro-purchase threshold that do not include the clause at 1852.223-70, Safety and Health, the contracting officer shall insert the clause at 1852.223-72, Safety and Health (Short Form).

Subpart 1823.71--Frequency Authorization

1823.7101 Contract clause.

The contracting officer shall insert the clause at 1852.223-71, Frequency Authorization, in solicitations and contracts calling for developing, producing, constructing, testing, or operating a device for which a radio frequency authorization is required.

1823.7102 Procedures.

The contracting officer shall obtain the necessary frequency authorization and other procedural details from the installation's spectrum manager.

occupational disease, contamination of property beyond any stated acceptable limits set forth in the contract Schedule; or property loss of \$25,000 or more, or Close Call (a situation or occurrence with no injury, no damage or only minor damage (less than \$1,000) but possesses the potential to cause any type mishap, or any injury, damage, or negative mission impact) that may be of immediate interest to NASA, arising out of work performed under this contract. The Contractor is not required to include in any report an expression of opinion as to the fault or negligence of any employee. In addition, service contractors (excluding construction contracts) shall provide quarterly reports specifying lost-time frequency rate, number of lost-time injuries, exposure, and accident/incident dollar losses as specified in the contract Schedule.

(e) The Contractor shall investigate all work-related incidents, accidents, and Close Calls, to the extent necessary to determine their causes and furnish the Contracting Officer a report, in such form as the Contracting Officer may require, of the investigative findings and proposed or completed corrective actions.

(f)(1) The Contracting Officer may notify the Contractor in writing of any noncompliance with this clause and specify corrective actions to be taken. The Contractor shall promptly take and report any necessary corrective action.

(2) If the Contractor fails or refuses to institute prompt corrective action in accordance with subparagraph (f)(1) of this clause, the Contracting Officer may invoke the stop-work order clause in this contract or any other remedy available to the Government in the event of such failure or refusal.

(g) The Contractor (or subcontractor or supplier) shall insert the substance of this clause, including this paragraph (g) and any applicable Schedule provisions, with appropriate changes of designations of the parties, in subcontracts of every tier that –

(1) Amount to \$1,000,000 or more (unless the Contracting Officer makes a written determination, after consultation with installation safety and health representatives, that this is not required);

(2) Require construction, repair, or alteration in excess of \$25,000; or

(3) Regardless of dollar amount, involve the use of hazardous materials or operations.

(h) Authorized Government representatives of the Contracting Officer shall have access to and the right to examine the sites or areas where work under this contract is being performed in order to determine the adequacy of the Contractor's safety and occupational health measures under this clause.

(i) The contractor shall continually update the safety and health plan when necessary. In particular, the Contractor shall furnish a list of all hazardous operations to be performed, and a list of other major or key operations required or planned in the performance of the contract, even though not deemed hazardous by the Contractor. NASA and the Contractor shall jointly decide which operations are to be considered hazardous, with NASA as the final authority. Before hazardous operations commence, the Contractor shall submit for NASA concurrence --

(1) Written hazardous operating procedures for all hazardous operations; and/or

(2) Qualification standards for personnel involved in hazardous operations.

(End of clause)

1852.223-71 Frequency Authorization.

As prescribed in 1823.7101, insert the following clause:

FREQUENCY AUTHORIZATION (DECEMBER 1988)

(a) Authorization of radio frequencies required in support of this contract shall be obtained by the Contractor or subcontractor in need thereof.

(b) For any experimental, developmental, or operational equipment for which the appropriate frequency allocation has not been made, the Contractor or subcontractor shall provide the technical operating characteristics of the proposed electromagnetic radiating device to the Contracting Officer during the initial planning, experimental, or developmental phase of contractual performance. Procedures furnished by the Contracting Officer shall be followed in obtaining radio frequency authorization.

(c) This clause, including this paragraph (c), shall be included in all subcontracts that call for developing, producing, testing, or operating a device for which a radio frequency authorization is required.

(End of clause)

1852.223-72 Safety and Health (Short Form).

As prescribed in 1823.7001(e), insert the following clause:

**SAFETY AND HEALTH (SHORT FORM)
(MAY 2001)**

(a) Safety is the freedom from those conditions that can cause death, injury, occupational illness; damage to or loss of equipment or property, or damage to the environment. NASA's safety priority is to protect: (1) the public, (2) astronauts and pilots, (3) the NASA workforce (including contractor employees working on NASA contracts), and (4) high-value equipment and property.

(b) The Contractor shall take all reasonable safety and occupational health measures consistent with standard industry practice in performing this contract. The Contractor shall comply with all Federal, State, and local laws applicable to safety and occupational health and with the safety and occupational health standards, specifications, reporting requirements, and any other relevant requirements of this contract.

(c) The Contractor shall take, or cause to be taken, any other safety, and occupational health measures the Contracting Officer may reasonably direct. To the extent that the Contractor may be entitled to an equitable adjustment for those measures under the terms and conditions of this contract, the equitable adjustment shall be determined pursuant to the procedures of the Changes clause of this contract; provided, that no adjustment shall be made under this Safety and Health clause for any change for which an equitable adjustment is expressly provided under any other clause of the contract.

(d) The Contracting Officer may notify the Contractor in writing of any noncompliance with this clause and specify corrective actions to be taken. The Contractor shall promptly take and report any necessary corrective action. The Government may pursue appropriate remedies in the event the contractor fails to promptly take the necessary corrective action.

(e) The Contractor (or subcontractor or supplier) shall insert the substance of this clause, including this paragraph (e) and any applicable Schedule provisions, with appropriate changes of designations of the parties, in subcontracts of every tier that exceed the micro-purchase threshold.

(End of clause)

1852.223-73 Safety and Health Plan.

As prescribed in 1823.7001(c), insert the following provision:

SAFETY AND HEALTH PLAN

(SEPTEMBER 2001)

The offeror shall submit a detailed safety and occupational health plan as part of its proposal (see NPG 8715.3, NASA Safety Manual, Appendices). The plan must include a detailed discussion of the policies, procedures, and techniques that will be used to ensure the safety and occupational health of contractor employees and to ensure the safety of all working conditions throughout the performance of the contract. The plan must similarly address safety and occupational health for subcontractor employees for any proposed subcontract whose value is expected to exceed \$500,000, including commercial services and services provided in support of a commercial item. Also, when applicable, the plan must address the policies, procedures, and techniques that will be used to ensure the safety and occupational health of: (1) the public, (2) astronauts and pilots, (3) the NASA workforce (including other contractor employees working on NASA contracts), and (4) high-value equipment and property. This plan, as approved by the Contracting Officer, will be included in any resulting contract.

(End of provision)

ALTERNATE I

(SEPTEMBER 2001)

As prescribed in 1823.7001(c), delete the first sentence of the basic provision and substitute the following:

The apparent low bidder, upon request by the Contracting Officer, shall submit a detailed safety and occupational health plan (see NPG 8715.3, NASA Safety Manual, Appendices). The plan shall be submitted within the time specified by the Contracting Officer. Failure to submit an acceptable plan shall make the bidder ineligible for the award of a contract.

1852.223-74 Drug- and alcohol-free workforce.

As prescribed in 1823.570-3, insert the following clause:

DRUG- AND ALCOHOL-FREE WORKFORCE

(MARCH 1996)

(a) **Definitions.** As used in this clause the terms "**employee**," "**controlled substance**," "**employee in a sensitive position**," and "**use, in violation of applicable law or Federal regulation, of alcohol**" are as defined in 48 CFR 1823.570-2.

(b)(1) The Contractor shall institute and maintain a program for achieving a drug-and alcohol-free workforce. As a minimum, the program shall provide for preemployment, reasonable suspicion, random, post-accident, and periodic recurring (follow-up) testing of contractor employees in sensitive positions for use, in violation of applicable law or Federal regulation, of alcohol or a controlled substance. The Contractor may establish its testing or rehabilitation program in cooperation with other contractors or organizations.

(2) This clause neither prohibits nor requires the Contractor to test employees in a foreign country. If the Contractor chooses to conduct such testing, this clause does not authorize the Contractor to violate foreign law in conducting such testing.

(3) The Contractor's program shall test for the use of marijuana and cocaine. The Contractor's program may test for the use of other controlled substances.

(4) The Contractor's program shall conform to the "Mandatory Guidelines for Federal Workplace Drug Testing Programs" published by the Department of Health and Human Services (59 FR 29908, June 9, 1994) and the procedures in 49 CFR part 40, "Procedures for Transportation Workplace Drug Testing Programs," in which references to "DOT" shall be read as "NASA", and the split sample method of collection shall be used.

(c)(1) The Contractor's program shall provide, where appropriate, for the suspension, disqualification, or dismissal of any employee in a sensitive position in any instance where a test

conducted and confirmed under the Contractor's program indicates that such individual has used, in violation of applicable law or Federal regulation, alcohol or a controlled substance.

(2) The Contractor's program shall further prohibit any such individual from working in a sensitive position on a NASA contract, unless such individual has completed a program of rehabilitation described in paragraph (d) of this clause.

(3) The Contractor's program shall further prohibit any such individual from working in any sensitive position on a NASA contract if the individual is determined under the Contractor's program to have used, in violation of applicable law or Federal regulation, alcohol or a controlled substance and the individual meets any of the following criteria:

(i) The individual had undertaken or completed a rehabilitation program described in paragraph (d) of this clause prior to such use;

(ii) Following such determination, the individual refuses to undertake such a rehabilitation program;

(iii) Following such determination, the individual fails to complete such a rehabilitation program; or

(iv) The individual used a controlled substance or alcohol while on duty.

(d) The Contractor shall institute and maintain an appropriate rehabilitation program which shall, as a minimum, provide for the identification and opportunity for treatment of employees whose duties include responsibility for safety-sensitive, security, or National security functions who are in need of assistance in resolving problems with the use of alcohol or controlled substances.

(e) The requirements of this clause shall take precedence over any state or local Government laws, rules, regulations, ordinances, standards, or orders that are inconsistent with the requirements of this clause.

(f) For any collective bargaining agreement, the Contractor will negotiate the terms of its program with employee representatives, as appropriate, under labor relations laws or negotiated agreements. Such negotiation, however, cannot change the requirements of this clause. Employees covered under collective bargaining agreements will not be subject to the requirements of this clause until those agreements have been modified, as necessary; provided, however, that if one year after commencement of negotiation the parties have failed to reach agreement, an impasse will be determined to have been reached and the Contractor will unilaterally implement the requirements of this clause.

(g) The Contractor shall insert a clause containing all the terms of this clause, including this paragraph (g), in all subcontracts in which work is performed by an employee in a sensitive position, except subcontracts for commercial items (see FAR parts 2 and 12).

(End of clause)

1852.223-75 Major Breach of Safety or Security.

As prescribed in 1823.7001(d), insert the following clause:

MAJOR BREACH OF SAFETY OR SECURITY (MAY 2001)

(a) Safety is the freedom from those conditions that can cause death, injury, occupational illness, damage to or loss of equipment or property, or damage to the environment. Safety is essential to NASA and is a material part of this contract. NASA's safety priority is to protect: (1) the public; (2) astronauts and pilots; (3) the NASA workforce (including contractor employees working on NASA contracts); and (4) high-value equipment and property. A major breach of safety may constitute a breach of contract that entitles the Government to exercise any of its rights and remedies applicable to material parts of this contract, including termination for default. A major breach of safety must be related directly to the work on the contract. A major breach of safety is an act or omission of the Contractor that consists of an accident, incident, or

exposure resulting in a fatality or mission failure; or in damage to equipment or property equal to or greater than \$1 million; or in any "willful" or "repeat" violation cited by the Occupational Health and Safety Administration (OSHA) or by a state agency operating under an OSHA approved plan.

(b) Security is the condition of safeguarding against espionage, sabotage, crime (including computer crime), or attack. A major breach of security may constitute a breach of contract that entitles the Government to exercise any of its rights and remedies applicable to material parts of this contract, including termination for default. A major breach of security may occur on or off Government installations, but must be related directly to the work on the contract. A major breach of security may arise from any of the following: compromise of classified information; illegal technology transfer; workplace violence resulting in criminal conviction; sabotage; compromise or denial of information technology services; damage or loss greater than \$250,000 to the Government; or theft.

(c) In the event of a major breach of safety or security, the Contractor shall report the breach to the Contracting Officer. If directed by the Contracting Officer, the Contractor shall conduct its own investigation and report the results to the Government. The Contractor shall cooperate with the Government investigation, if conducted.

(End of clause)

1852.225-8 Duty-Free Entry of Space Articles.

As prescribed in 1825.1101(e), add the following paragraph (k) to the basic clause at FAR 52.225-8:

(k) The following supplies will be given duty-free entry:

[Insert the supplies that are to be accorded duty-free entry.]

(End of addition)

1852.225-70 Export Licenses.

As prescribed in 1825.1103-70(b), insert the following clause:

EXPORT LICENSES (FEBRUARY 2000)

(a) The Contractor shall comply with all U.S. export control laws and regulations, including the International Traffic in Arms Regulations (ITAR), 22 CFR Parts 120 through 130, and the Export Administration Regulations (EAR), 15 CFR Parts 730 through 799, in the performance of this contract. In the absence of available license exemptions/exceptions, the Contractor shall be responsible for obtaining the appropriate licenses or other approvals, if required, for exports of hardware, technical data, and software, or for the provision of technical assistance.

(b) The Contractor shall be responsible for obtaining export licenses, if required, before utilizing foreign persons in the performance of this contract, including instances where the work is to be performed on-site at [*insert name of NASA installation*], where the foreign person will have access to export-controlled technical data or software.

(c) The Contractor shall be responsible for all regulatory record keeping requirements associated with the use of licenses and license exemptions/exceptions.

(d) The Contractor shall be responsible for ensuring that the provisions of this clause apply to its subcontractors.

(End of clause)

ALTERNATE I (FEBRUARY 2000)

As prescribed in 1825.1103-70(b), add the following paragraph (e) as Alternate I to the clause:

(e) The Contractor may request, in writing, that the Contracting Officer authorize it to export ITAR-controlled technical data (including software) pursuant to the exemption at 22 CFR 125.4(b)(3). The Contracting Officer or designated representative may authorize or direct the use of the exemption where the data does not disclose details of the design, development, production, or manufacture of any defense article.